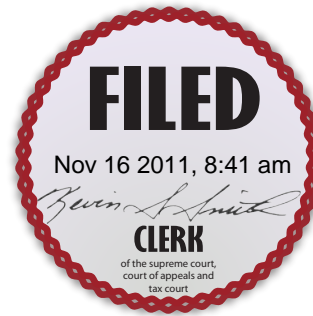


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

JEREMY K. NIX
Matheny, Hahn, Denman & Nix, L.L.P.
Huntington, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANDREW R. FALK
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ELVIS A. HALL,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 35A02-1106-CR-587
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE HUNTINGTON SUPERIOR COURT
The Honorable Jeffrey R. Heffelfinger, Judge
Cause No. 35D01-0906-FD-114

November 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Elvis A. Hall appeals his sentence for theft as a class D felony. Hall raises one issue which we revise and restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. On February 11, 2009, Hall went to Movie Gallery on North Jefferson Street in Huntington, Indiana. While the store manager was in the back room, Hall took a set of keys from the counter that belonged to Movie Gallery. Hall did not have permission to take the keys. He then used the keys to commit further criminal activity at other Movie Gallery stores in northeast Indiana.

On June 3, 2009, the State charged Hall with theft as a class D felony. On April 26, 2011, Hall pleaded guilty as charged and filed a Motion to Enter a Plea of Guilty which alleged that the State agreed to “recommend a cap of one hundred eighty (180) days on the initially executed portion of [Hall’s] sentence.” Appellant’s Appendix at 29. The motion stated that “[o]therwise, sentencing shall be in the discretion of the Court.”

Id. The motion also stated:

I understand that even though the Prosecuting Attorney will make a recommendation as to my sentence, his/her recommendation is NOT BINDING upon the Court. I further understand that the Court may accept or reject any or all of such recommendation in determining what my sentence will be.

Id.

At the guilty plea hearing, the court clarified that the State’s recommendation “will be a sentencing recommendation and it’s a recommendation only.” Transcript at 22. The court accepted Hall’s guilty plea.

At the sentencing hearing, Hall's counsel admitted that Hall had "a lot of pending charges" and that the "official version is that he took some keys although there is also some illusion [sic]" in "the Presentence Report that he used those keys to commit other crimes" but "[t]here is no concrete evidence in the report, obviously, as to what extent those keys were used in other crimes" Id. at 29. The State recommended a "sentence of one hundred and eighty (180) days per the Plea Agreement." Id. The court observed that this offense was Hall's sixth "either Theft, Conversion or Check Deception offense." Id. at 30. The court also observed that Hall had "eight (8) Petitions to Revoke and . . . six (6) cases that are presently pending and a number of those are also Theft cases in different counties." Id. The court sentenced Hall to one and one-half years in the Department of Correction.

The issue is whether Hall's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Hall requests that this court revise his sentence to 180 days. As to the nature of the offense, Hall argues that "[a]lthough the factual basis for his guilty plea indicated that he used the keys to commit further criminal activity involving other Movie Gallery stores in Northeast Indiana, there was no evidence supporting that statement." Appellant's

Brief at 4. Hall argues that “the only theft or theft-related charges were on October 7, 2009 when Hall was charged with Aiding in Theft in Allen County and on January 7, 2011 when he was charged with Theft in Fulton County, Indiana.” Id. at 5. Hall argues that “there was no evidence that [he] used the keys to commit any further criminal activity against Movie Gallery” and that the theft did not result in “any appreciable loss to the victim.” Id. Regarding his character, Hall argues in part that he had a close relationship with his mother until she passed away four years ago and that a large part of his criminal history appears to have been committed after the death of his mother. The State argues that Hall “may not subsequently violate the contractual nature of his plea agreement and argue that the facts were something different than those that he affirmed to the trial court to be true and accurate” and that his sentence is not inappropriate. Appellee’s Brief at 6.

Our review of the nature of the offense reveals that Hall testified at the guilty plea hearing that the factual basis contained in his Motion to Enter a Plea of Guilty was true and accurate, and this factual basis states:

My name is Elvis Hall, and I am 30 years old. On February 11, 2009, I went to Movie Gallery on North Jefferson Street in Huntington. While the store manager was in the back room, I took a set of keys from the counter that belonged to Movie Gallery. I then used the keys to commit further criminal activity at other Movie Gallery stores in northeast Indiana. At no time did I have permission to take the keys. All of these events occurred in Huntington County, Indiana.

Appellant’s Appendix at 31.

Our review of the character of the offender reveals that Hall has convictions for receiving stolen property, check deception, furnishing alcohol to a minor, leaving the

scene of an accident, and resisting law enforcement. Hall also has convictions for conversion in 2000, 2005, and 2008. The record reveals that multiple petitions to revoke probation have been filed related to Hall's past offenses and that Hall failed to appear on multiple occasions. At the sentencing hearing, Hall's attorney stated that Hall "does have a lot of pending charges," and the record reveals that Hall has been charged in six cases in which a warrant has issued and three of the cases involve theft. After due consideration, we cannot say that the advisory sentence of one and one-half years is inappropriate in light of the nature of the offense and the character of the offender.

For the foregoing reasons, we affirm Hall's sentence for theft as a class D felony.

Affirmed.

BAKER, J., and KIRSCH, J., concur.